



**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF CITIZEN COMPLAINT REVIEW**



August 28, 2003

The Honorable Orrin Hatch
Chairman, Committee on the Judiciary
United States Senate
104 Hart Senate Office Building
Washington, DC 20510

RE: Senate Bill 1277

Dear Mr. Chairman:

I am writing to express our concerns with Senate Bill 1277, the “State and Local Law Enforcement Discipline, Accountability, and Due Process Act of 2003,” which is currently pending before the Committee on the Judiciary. As the executive director of an independent police oversight agency, the District of Columbia’s Office of Citizen Complaint Review (OCCR), I urge you not to support the bill, and to consider the issues raised in this letter when reviewing any future legislation regarding police accountability. While S. 1277 contains some provisions that provide important protections for law enforcement officers, the bill also contains several provisions that would directly limit OCCR’s ability to achieve its mandate of providing the District of Columbia with effective, meaningful, independent oversight of the police force. This letter summarizes our concerns regarding the bill, and the enclosed analysis elaborates on our views as they relate to specific sections of the bill.

Our concerns about S. 1277 stem from the fact that the bill is an attempt to address a variety of issues, in a huge variety of agencies – police and non-police, large and small, and urban and rural – with a one-size-fits-all solution. One consequence of this approach is that the issues that the bill seeks to address are not problems for all the agencies covered by the bill, so it will be attempting to fix problems that do not exist. In addition, the bill does not appear to have been drafted to take account of the significant variation in the agencies it will affect and, as a result, it will be detrimental to the goals identified in its title as the subjects of the bill – discipline, accountability, and due process. With respect to OCCR, which clearly is charged with investigating police officer misconduct, the extent to which the bill applies to our agency is not clear because of the bill’s confusing and often contradictory provisions. And, to the extent it does cover OCCR, it will alter fundamental features of our agency, and will impose significant financial costs on our work that will limit our ability to function.

One of the purposes of S. 1277 is to provide officers with fundamental protections when they are being investigated. These protections include the right to be represented by counsel and

the right to receive notice of the investigative findings. As part of OCCR's process, adding these protections is unnecessary because they are already guaranteed to all members of the Metropolitan Police Department (MPD) through the personnel regulations of the District government and OCCR's regulations. Another purported goal of the bill is to protect the labor rights of officers against intrusion by the police department. With respect to our agency, however, labor issues are not relevant because we do not employ the officers we investigate. Consequently, to the extent the provisions of the bill are seeking to address issues that stem from labor relations, they affect our agency even though such problems do not, and cannot, exist.

With respect to the scope and coverage of the bill, it is not clear whether and how the bill would affect OCCR because the relevant provisions of the bill are ambiguous, confusing, and often contradictory. For example, the definitions section of the bill, as well as other provisions, refer to actions taken by a "public agency," which OCCR is, but the same section also refers to actions taken by a "law enforcement agency," which OCCR is not. It is not clear whether any or all of these provisions would apply to OCCR. Furthermore, the types of misconduct that fall within the scope of the bill are unclear. The definitions section of the bill refers to investigations "to determine whether a law enforcement officer violated a law," which sounds like it is referring to criminal conduct. The bill never mentions whether it is supposed to cover violations of orders, rules, and policies, which do not necessarily amount to a violation of the law, and compose the significant majority of OCCR's caseload and the work of other agencies that investigate the police. Nonetheless, the bill places limits on "disciplinary action," whose definition is so broad as to cover many things other than a violation of the law. The combination of these provisions creates significant uncertainty that would make it impossible to know what limits are being placed on an agency, and how they should be implemented.

Other provisions of S. 1277 would fundamentally alter the operation of OCCR from what was envisioned by the city of Washington, D.C., when it created the agency. OCCR was designed to be an agency that is available and open to the public. The provision of the bill that requires that all hearings be closed undermines a key aspect of OCCR's design. As an independent police oversight agency, OCCR's credibility depends on the public's perception that we are an open agency. One of the primary complaints about police misconduct investigations that are handled by police departments is that the public is kept in the dark about the process and often the results. Holding open hearings on police misconduct allegations allows the public to see that the District takes police misconduct seriously and contributes to increased public confidence in both MPD and the District's police accountability mechanisms.

Beyond the changes the bill would make to how OCCR operates, S. 1277 includes numerous requirements that would impose significant financial costs on our agency. The bill requires that all officer interviews be tape-recorded and transcribed, which is not OCCR's current practice. Considering the volume of interviews that OCCR conducts, the agency would have to spend tens of thousands of dollars to have the interviews transcribed, or would have to reduce its investigative staff to hire someone to prepare the transcriptions. The bill also requires that every complaint, no matter how minor the allegation, have a hearing conducted by an

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independent hearing examiner. This requirement would also impose tens of thousands of dollars in costs on OCCR to pay for the court reporting and other fees for OCCR's complaint hearings, and this does not take account of the hundreds of thousands of dollars that would be needed to conduct hearings that the police department would normally handle internally. These costs would be unmanageable with OCCR's current budget, and, in this time of scarce resources at the state and local level, we could not realistically expect to be provided with all the funds that are necessary to implement the requirements of the bill. So the result would be a reduction in OCCR's already small investigative staff to accommodate these costs, or an inability of the agency to function under the new requirements.

As outlined above, we have significant concerns about S. 1277 and the effect it would have on the operation of our office and other agencies that are charged with investigating the police. We hope that you will consider these views and that you will not support the bill. Thank you for your time in reviewing this letter, and we would welcome the opportunity to discuss the bill or any related issues with you or your staff. Also, if we can provide you with any further information, please let me or my deputy director, Thomas Sharp, know. We can be reached at (202) 727-3838.

Sincerely,

Philip K. Eure
Executive Director

Enclosure